

AMENDED IN ASSEMBLY JANUARY 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1589

Introduced by Committee on Accountability and Administrative Review (De La Torre (Chair), Audra Strickland (Vice Chair), Arambula, Tom Berryhill, Block, Caballero, Emmerson, Fuentes, Hagman, Huber, Jones, Krekorian, Bonnie Lowenthal, and V. Manuel Perez)

September 12, 2009

An act to ~~amend Section 4905 of, to add Section 4639.3~~ *add Section 4626.1* to, and to add Division 4.8 (commencing with Section 4910) to, the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1589, as amended, Committee on Accountability and Administrative Review. Regional centers: whistleblower protection: related-party transactions.

Existing law, the Lanterman Developmental Disabilities Services Act, requires the State Department of Developmental Services to allocate funds to private nonprofit regional centers for the provision of community services and support for persons with developmental disabilities and their families, including, but not limited to, residential placement, and sets forth the duties of the regional centers, including, but not limited to, development of individual program plans, the purchase of needed services to implement the plan, and the monitoring of services. ~~The act prohibits an employee or agent of a facility or program from subjecting a person with developmental disabilities to reprisal or harassment that would prevent the person, his or her legally authorized representative, or family member from reporting to the~~

protection and advocacy agency designated by the Governor information pertaining to suspected abuse, neglect, or other violations of the person's rights.

~~This bill would extend that prohibition to any person.~~

Existing law authorizes the department to adopt and enforce conflict-of-interest regulations to ensure that members of the governing board, program policy committees, and employees of regional centers make decisions that are in the best interest of consumers and the families of consumers.

This bill would require a regional center to disclose on its Internet Web site specified information regarding ~~related-party~~ *related-person* transactions, as defined, on a quarterly basis, keep a log of that information for a period of 3 years after termination of the regional center contract, and provide that information to the public upon request.

Existing law, the California Whistleblower Protection Act, sets forth the circumstances and procedures under which a state employee, as defined, may report improper governmental activities, as defined, or make a protected disclosure, as defined, to the State Auditor, and prohibits retaliation or reprisal against a state employee for these acts.

This bill would enact the Regional Center Whistleblower Protection Act providing similar protections for regional center employees who report improper regional center activities, as defined, or make a protected disclosure, as defined, to the department or the Legislature. *It would require the department to investigate complaints under these provisions, and would require remedial actions to be taken by regional centers when appropriate.* The bill would establish a private cause of action to enforce these provisions and, *in connection, would require that complaints filed with the employee's supervisor, manager, or regional center director, be submitted under penalty of perjury, thereby constituting a crime, and thus imposing a state-mandated local program.* The bill would make certain acts of reprisal a crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section ~~4639.3~~ 4626.1 is added to the Welfare and Institutions Code, to read:

~~4639.3.~~

4626.1. (a) For purposes of this section, the following terms shall have the following meanings:

(1) A “related person” means a person who was in any of the following categories at a time during the specified period for which disclosure is required pursuant to subdivision (b):

(A) A director or officer of the regional center.

(B) A nominee for director.

(C) An immediate family member of a director or officer of the regional center or any nominee for director, which means a child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of the director, officer or director nominee, and a person, other than a tenant or employee, sharing the household of the director, officer, or director nominee.

(2) A “transaction” includes, but is not limited to, a financial transaction, arrangement or relationship, including an indebtedness or guarantee of indebtedness, or a series of similar transactions, arrangements, or relationships.

(3) A “related-person transaction” means a transaction in which the regional center was or is to be a participant and in which a related person had or will have a direct or indirect material interest.

(b) Within 30 days following the last day of each of its fiscal quarters, a regional center shall disclose on its Internet Web site the following information, regarding each related-person transaction that occurred during that quarter:

(1) The name of the related person and the basis on which the person is a related person.

(2) The related person’s interest in the transaction with the regional center, including the related person’s position or relationship with, or ownership in, a firm, corporation, or other entity that is a party to, or has an interest in, the transaction.

(3) The approximate dollar value of the amount involved in the transaction.

1 (4) The approximate dollar value of the related person's interest
2 in the transaction, which shall be computed without regard to the
3 amount of profit or loss.

4 (5) In the case of indebtedness, disclosure of the amount
5 involved in the transaction shall include the largest aggregate
6 amount of principal outstanding during the period for which
7 disclosure is provided, the amount outstanding as of the latest
8 practicable date, the amount of principal paid during the quarter,
9 the amount of interest paid during the quarter, and the rate or
10 amount of interest payable on the indebtedness.

11 (6) Any other information regarding the transaction or the related
12 person in the context of the transaction that is material to the public
13 in light of the circumstances of the particular transaction.

14 (c) The department shall post a link to each regional center's
15 disclosure information pursuant to subdivision (b) on the
16 department's Internet Web Site.

17 (d) The information set forth in subdivision (b) shall remain on
18 the regional center's Internet Web site for a 12-month period. The
19 regional center shall keep a log of the quarterly disclosures required
20 pursuant to subdivision (b) for a period of three years after the
21 regional center contract has terminated and shall make the
22 information available upon request to a member of the public.

23 ~~(e) It is the intent of the Legislature that no additional state funds~~
24 ~~be appropriated for the purposes of this section and that these~~
25 ~~activities be funded through existing regional center administrative~~
26 ~~resources.~~

27 *(e) Regional centers shall implement this section through*
28 *existing resources.*

29 ~~SEC. 2. Section 4905 of the Welfare and Institutions Code is~~
30 ~~amended to read:~~

31 ~~4905. (a) No employee or agent of a facility, program, or~~
32 ~~service shall subject a person to reprisal or harassment or directly~~
33 ~~or indirectly take or threaten to take an action that would prevent~~
34 ~~the person, his or her legally authorized representative, or family~~
35 ~~member from reporting or otherwise bringing to the attention of~~
36 ~~the protection and advocacy agency or an entity having oversight~~
37 ~~jurisdiction over a regional center the facts or information relative~~
38 ~~to suspected abuse, neglect, or other violations of any consumer's~~
39 ~~rights.~~

1 ~~(b) An attempt to involuntarily remove from a facility, program,~~
2 ~~or service, or to deny privileges or rights without good cause to a~~
3 ~~consumer by whom or for whom a complaint has been made to~~
4 ~~the protection and advocacy agency or any entity having oversight~~
5 ~~jurisdiction over a regional center, within 60 days after the date~~
6 ~~the complaint is made or within 60 days after the conclusion of a~~
7 ~~proceeding resulting from the complaint, shall raise a presumption~~
8 ~~that the action was taken in retaliation for the filing of the~~
9 ~~complaint.~~

10 ~~SEC. 3.~~

11 SEC. 2. Division 4.8 (commencing with Section 4910) is added
12 to the Welfare and Institutions Code, to read:

13
14 DIVISION 4.8. REGIONAL CENTER WHISTLEBLOWER
15 PROTECTION ACT
16

17 4910. This division shall be known and may be cited as the
18 “Regional Center Whistleblower Protection Act.”

19 4911. For purposes of this division:

20 (a) “Employee” means an individual employed with, holding
21 office in, or serving as a governing board member of, a regional
22 center as described by Article 1 (commencing with Section 4620)
23 of Chapter 5 of Division 4.5.

24 (b) “Illegal order” means a directive to violate or assist in
25 violating a federal, state, or local law, rule, or regulation or an
26 order to work or cause others to work in conditions outside of their
27 line of duty that would unreasonably threaten the health or safety
28 of employees or the public.

29 (c) “Improper regional center activity” means an activity by a
30 regional center or by an employee that is undertaken in the
31 performance of the employee’s official duties, whether or not that
32 action is within the scope of his or her employment, and that (1)
33 is in violation of a state or federal law or regulation, including, but
34 not limited to, corruption, malfeasance, bribery, theft of
35 government property, fraudulent claims, fraud, coercion,
36 conversion, malicious prosecution, misuse of government property,
37 or willful omission to perform duty, or (2) is economically
38 wasteful, or involves gross misconduct, incompetency, or
39 inefficiency. The intentional failure of a regional center to comply

1 with any provision of this division shall constitute an improper
2 regional center activity for purposes of this division.

3 (d) “Person” means an individual, corporation, partnership,
4 limited liability company, trust, association, a state or local
5 government, or an agency or instrumentality of any of the
6 foregoing.

7 (e) “Protected disclosure” means a good faith communication
8 that discloses or demonstrates an intention to disclose to the
9 department or the Legislature information that may evidence (1)
10 an improper regional center activity or (2) a condition that may
11 significantly threaten the health or safety of employees or the
12 public if the disclosure or intention to disclose was made for the
13 purpose of remedying that condition.

14 4912. (a) An employee ~~may~~ *shall* not directly or indirectly
15 use or attempt to use the official authority or influence of the
16 employee for the purpose of intimidating, threatening, coercing,
17 commanding, or attempting to intimidate, threaten, coerce, or
18 command any person for the purpose of interfering with the rights
19 conferred pursuant to this division.

20 (b) For the purpose of subdivision (a), “use the official authority
21 or influence” includes promising to confer, or conferring, a benefit;
22 effecting, or threatening to effect, a reprisal; or taking, or directing
23 others to take, or recommending, processing, or approving, a
24 personnel action, including, but not limited to, appointment,
25 promotion, transfer, assignment, performance evaluation,
26 suspension, or other disciplinary action.

27 (c) An employee who violates subdivision (a) may be liable in
28 an action for civil damages brought against the employee by the
29 offended party.

30 (d) Nothing in this section shall be construed to authorize an
31 individual to disclose information otherwise prohibited by or under
32 law.

33 4913. (a) Except as expressly set forth in this division, the
34 department shall administer this ~~division, shall investigate, division~~
35 *and shall investigate* and ~~shall report report~~, as set forth in this
36 section, regarding improper regional center activities.

37 (b) Upon receiving specific information that improper regional
38 center activity has occurred, the department shall investigate and
39 may, if necessary, conduct a full investigative audit of the matter.
40 The identity of the person providing the information that initiated

1 the investigation shall not be disclosed without the written
2 permission of the person providing the information unless the
3 disclosure is to a law enforcement agency that is conducting a
4 criminal investigation.

5 (c) If the department determines that there is reasonable cause
6 to believe that improper regional center activity has occurred, the
7 department shall report the nature and details of the activity to the
8 regional center director.

9 (d) If, after investigating, the department finds that improper
10 regional center activities have occurred, the department shall send
11 a copy of the investigative report to the regional center. Within 30
12 days after receiving a copy of the department's investigative report,
13 the regional center shall either serve a notice of *adverse personnel*
14 action upon the employee *or employees* who ~~is~~ *are* the subject of
15 the investigative report or set forth in writing its reasons for not
16 taking *adverse personnel* action. The regional center shall submit
17 a copy of the notice of *adverse personnel* action to the department.
18 ~~If the regional center does not take adverse action, it shall submit~~
19 ~~its written reasons for not doing so to the department. If the focus~~
20 ~~of the investigative report is a policy or procedure, instead of an~~
21 ~~employee, the regional center shall, within 30 days after receiving~~
22 ~~a copy of the department's investigative report, submit a plan of~~
23 ~~corrective action to the department.~~

24 ~~(e) If appropriate, the department shall report this information~~
25 ~~to the Attorney General, the policy committees of the Senate and~~
26 ~~Assembly having jurisdiction over the subject involved, and to~~
27 ~~another authority that the department determines appropriate.~~

28 (e) *The department shall report the outcome of the investigation*
29 *to the policy committees of the Senate and Assembly having*
30 *jurisdiction over regional centers, to the Assembly Committee on*
31 *Accountability and Administrative Review, and to any other*
32 *committee or authority that the department determines appropriate.*
33 *If the department reasonably believes that the investigative report*
34 *may involve criminal actions, the department shall also report this*
35 *information to the Attorney General.*

36 ~~4915.~~

37 4914. The department may request the assistance of a state
38 department, agency, or employee in conducting an investigative
39 audit required by this division. No information obtained from the
40 department, agency, or employee as a result of the department's

1 request for assistance, nor any information obtained thereafter as
2 a result of further investigation, shall be divulged or made known
3 to a person without the prior approval of the department.

4 ~~4916.~~

5 *4915. (a) In a case in which the department submits a report*
6 *of alleged improper regional center activity to the regional center*
7 *director, the regional center director shall report to the department*
8 *with respect to the action taken by the individual regarding the*
9 *activity, the first report being transmitted within 30 days after the*
10 *date of the department's report and monthly thereafter until final*
11 *action has been taken.*

12 ~~(b) Every investigation shall be kept confidential, except that~~
13 ~~the department shall issue a report of an investigation that has been~~
14 ~~substantiated, keeping confidential the identity of the individual~~
15 ~~or individuals involved, and shall release the findings resulting~~
16 ~~from an investigation conducted pursuant to this division that is~~
17 ~~deemed necessary to serve the interests of the state. Information~~
18 ~~provided to the department, or by the department, pursuant to this~~
19 ~~division is exempt from the prohibitions of Sections 4514 and~~
20 ~~5328.~~

21 *(b) (1) Information provided to the department, or by the*
22 *department, pursuant to this division is exempt from the*
23 *prohibitions of Sections 4514 and 5328.*

24 *(2) Notwithstanding paragraph (1), every investigation shall*
25 *be kept confidential, except that the department shall issue a report*
26 *of an investigation that has been substantiated, keeping confidential*
27 *the identity of the individual or individuals who provided*
28 *information that initiated the investigation and the identity of the*
29 *consumer or consumers of regional center services that may have*
30 *been involved. The department shall only release findings resulting*
31 *from an investigation conducted pursuant to this division that are*
32 *deemed necessary to serve the interests of the state.*

33 *(c) Notwithstanding any other provisions of law, including, but*
34 *not limited to, Section 4915 4914, this division shall not limit the*
35 *authority conferred upon the Attorney General or a department or*
36 *agency of government to investigate any matter.*

37 ~~4917.~~

38 *4916. (a) An employee or applicant for regional center*
39 *employment who files a written complaint with his or her*
40 *supervisor, manager, or the regional center alleging actual or*

1 attempted acts of reprisal, retaliation, threats, coercion, or similar
2 improper acts prohibited by this division, may also file a copy of
3 the written complaint with the department, together with a sworn
4 statement that the contents of the written complaint are true, or are
5 believed by the affiant to be true, under penalty of perjury. The
6 complaint filed with the department, shall be filed within 12 months
7 of the most recent act of reprisal complained-about of.

8 (b) A person who intentionally engages in acts of reprisal,
9 retaliation, threats, coercion, or similar acts against an employee
10 ~~or applicant for regional center employment~~ for having made a
11 protected disclosure, is subject to a fine not to exceed ten thousand
12 dollars (\$10,000) and imprisonment in the county jail for a period
13 not to exceed one year.

14 (c) In addition to all other penalties provided by law, a person
15 who intentionally engages in acts of reprisal, retaliation, threats,
16 coercion, or similar acts against an employee ~~or applicant for~~
17 ~~regional center employment~~ for having made a protected disclosure
18 shall be liable in an action for damages brought against him or her
19 by the injured party. Punitive damages may be awarded by the
20 court where the acts of the offending party are proven to be
21 malicious. Where liability has been established, the injured party
22 shall also be entitled to reasonable attorney's fees as provided by
23 law. However, an action for damages shall not be available to the
24 injured party unless the injured party has first filed a complaint
25 with the department pursuant to subdivision (a), and the department
26 has issued, or failed to issue, findings.

27 (d) This section is not intended to prevent a regional center,
28 manager, or supervisor from taking, directing others to take,
29 recommending, or approving a personnel action or from taking or
30 failing to take a personnel action with respect to an employee ~~or~~
31 ~~applicant for regional center employment~~ if the regional center,
32 manager, or supervisor reasonably believes the action or inaction
33 is justified on the basis of evidence separate and apart from the
34 fact that the person has made a protected disclosure.

35 (e) In a civil action or administrative proceeding, once it has
36 been demonstrated by a preponderance of evidence that an activity
37 protected by this division was a contributing factor in the alleged
38 retaliation against a former, ~~current, or prospective~~ *or current*
39 employee, the burden of proof shall be on the supervisor, manager,
40 or regional center to demonstrate by clear and convincing evidence

1 that the alleged action would have occurred for legitimate,
2 independent reasons even if the employee had not engaged in
3 protected disclosures or refused an illegal order. If the supervisor,
4 manager, or regional center fails to meet this burden of proof in
5 ~~an adverse~~ *a personnel* action against the employee in an
6 administrative review, challenge, or adjudication in which
7 retaliation has been demonstrated to be a contributing factor, the
8 employee shall have a complete affirmative defense in the ~~adverse~~
9 *personnel* action.

10 (f) Nothing in this division shall be deemed to diminish the
11 rights, privileges, or remedies of an employee under any other
12 federal or state law or under any employment contract or collective
13 bargaining agreement.

14 ~~4918.~~

15 ~~4917.~~ By April 1, 2010, the department shall prepare for
16 employees a written explanation of the provisions of this division
17 and Division 4.7 (commencing with Section 4900). The explanation
18 shall include, but need not be limited to, all of the following
19 information:

20 (a) Instructions on how to contact the department by mail,
21 telephone, e-mail, and fax.

22 (b) A general overview of improper regional center activities
23 and examples of three of the most common types of improper
24 regional center activities that may be reported to the department.

25 (c) An explanation of whistleblower protection available to
26 employees who report improper regional center activities to the
27 department.

28 (d) The requirement that the department protect the anonymity
29 of a person who reports improper regional center activity to the
30 department.

31 (e) The department's authority in connection with violations of
32 law discovered during an investigation of improper regional center
33 activities.

34 (f) A description of the penalties imposed under Section ~~4917~~
35 ~~4916.~~

36 ~~4919.~~

37 ~~4918.~~ (a) The department shall prepare for distribution to each
38 regional center in an electronic format a notice containing the
39 information in the written explanation prepared pursuant to Section
40 ~~4918.~~ By July 1, 2010, each regional center shall print and post

1 ~~this notice at its office or offices in a location or locations where~~
2 ~~employee notices are maintained. A regional center shall not edit~~
3 ~~the written text of the notice but it may publish the notice in a~~
4 ~~manner it chooses, and it may include its own introductory~~
5 ~~language in the notice, provided that the language and the format~~
6 ~~selected do not alter the meaning of the notice. 4917.~~

7 *(b) By July 1, 2010, each regional center shall print and post*
8 *the notice distributed pursuant to subdivision (a) at its office or*
9 *offices in a location or locations where employee notices are*
10 *maintained. A regional center shall not edit the written text of the*
11 *notice, but may include its own introductory language in the notice,*
12 *provided that the language and the format selected do not alter*
13 *the meaning of the notice.*

14 ~~(b) On~~

15 *(c) In addition to the posted notice, on July 1, 2010, and annually*
16 *thereafter, every regional center shall send the information*
17 *contained in the notice by electronic mail e-mail to its employees*
18 *who have authorized access to electronic mail e-mail from the*
19 *regional center.*

20 ~~(e)~~

21 *(d) The department shall post the information described in*
22 *Section 4918 4917 on its Internet Web site.*

23 ~~SEC. 4.~~

24 *SEC. 3. No reimbursement is required by this act pursuant to*
25 *Section 6 of Article XIII B of the California Constitution because*
26 *the only costs that may be incurred by a local agency or school*
27 *district will be incurred because this act creates a new crime or*
28 *infraction, eliminates a crime or infraction, or changes the penalty*
29 *for a crime or infraction, within the meaning of Section 17556 of*
30 *the Government Code, or changes the definition of a crime within*
31 *the meaning of Section 6 of Article XIII B of the California*
32 *Constitution.*